

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LEONARD ALLAN LUTZ,

Petitioner

v.

C-1-01-326

SAMUEL A. TAMBI,

Respondent

ORDER

This matter was referred pursuant to 28 U.S.C. § 636 to the United States Magistrate Judge for consideration and report on the Petition for Writ of Habeas Corpus filed by the petitioner pursuant to 28 U.S.C. § 2254. The matter is before the Court upon the Report and Recommendation of the Magistrate Judge (doc. no. 4) recommending that the Petition for Writ of Habeas Corpus be dismissed to which neither party has objected.

Upon a *de novo* review of the record, the Court finds that the Magistrate Judge has accurately set forth the applicable law and has properly applied it to the particular facts of this case. Accordingly, in the absence of any objection by petitioner, this Court accepts the Report as uncontroverted.

Accordingly, the Court accepts the factual findings and legal reasoning of the Magistrate Judge and hereby **ADOPTS AND INCORPORATES BY REFERENCE** into this Order by reference his Report and Recommendation dated August 4, 2003. The Petition for Writ of Habeas Corpus is, therefore, **DISMISSED FOR LACK OF JURISDICTION**.

Pursuant to 28 U.S.C. § 1915(a), this Court certifies that an appeal from this Order would not be taken in good faith for purposes of granting petitioner leave to appeal *in forma pauperis*. See Fed. R. App. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (1997).

Further, the Court will not issue a certificate of appealability. The Court concludes that none of the issues raised by petitioner in his habeas corpus petition are debatable among reasonable jurists, could be resolved differently on appeal or are adequate to deserve encouragement to proceed further. In addition, petitioner has not made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C.A. § 2253(c) (West Supp. 1996); Fed. R. App. P. 22(b), as amended by § 103 of the AEDPA.

This case is **DISMISSED AND TERMINATED** on the docket of this Court.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court